

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DANIEL A. PAXTON**  
Claimant

VS.

**TRANSAM TRUCKING, INC.**  
Self-Insured Respondent

)  
)  
)  
)  
)  
)  
)

Docket No. **1,033,769**

**ORDER**

Self-insured respondent requests review of the October 15, 2007 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

The Administrative Law Judge (ALJ) found claimant sustained an accidental injury arising out of and in the course of employment and therefore ordered respondent to provide medical treatment as well as temporary total disability benefits at the rate of \$372.50 per week from February 12, 2007, through June 1, 2007.

The respondent requests review of whether claimant's injury arose out of and in the course of employment. Respondent argues there is no credible evidence to prove claimant sustained an injury nor is claimant's testimony credible because claimant lied under oath.

Claimant argues the ALJ correctly found that the medical evidence corroborates claimant's testimony and therefore the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The claimant was employed as a truck driver for respondent. His job was to drive an 18-wheel semi-tractor pulling a trailer full of no-touch freight. No-touch freight means the claimant did not have to load or unload it. Claimant was taking a load from Plainview, Texas, to Pennsylvania in a short period of time. He testified this trip was more strenuous due to the long periods of driving as well as mountain driving. This required more strain on his neck because it required him to turn his head more when checking the trailer.

After claimant arrived at his destination of Hazelton, Pennsylvania, the truck was unloaded and claimant slept for a short period of time in the sleeper cab of his vehicle. He was awakened by severe pain in his neck which radiated into his left arm. He also experienced discomfort in his chest. Claimant drove to the hospital a few miles away and was taken to the emergency room.

Diagnostic testing was initially focused upon whether claimant had a coronary problem. A CT of the cervical spine indicated mild degenerative changes and an MRI of the cervical spine noted mild to moderate left-sided neural foraminal narrowing located at the C2-3 level and moderate to severe left-sided neural foraminal narrowing located at the C3-4 level. One of the examining physicians noted claimant's cervical spine was non-tender and had good range of motion and another examining physician noted claimant did not have clinical evidence of either cervical myelopathy or cervical radiculopathy. Nonetheless, a consulting physician concluded claimant had a cervical problem aggravated by work. Claimant was released with the recommendation of no driving until he was evaluated by a neurologist.

Dr. Paul S. Stein examined claimant on April 11, 2007, at the request of claimant's attorney. The claimant provided the doctor with a history of awakening with an onset of pain in his neck, left shoulder and down the left arm after he had been driving long hours for several days. Claimant complained of pain in his neck and down the left upper extremity. The doctor noted there was pathology on the cervical MRI but the doctor was unable to clearly define nerve root impingement on the left. Accordingly, Dr. Stein recommended additional diagnostic tests including a cervical myelogram/CT scan and an EMG/NCT of the left upper extremity. Dr. Stein concluded that if claimant's current symptomatology is from the cervical spine, it is more likely than not related to his work activity by aggravation of the degenerative disease.

At the preliminary hearing held on June 12, 2007, the claimant was asked a series of questions and denied that he could drive a car, denied that he performed any work since the incident in Pennsylvania and denied that he had earned any money since that time. Respondent then offered into evidence a video surveillance as well as photographs of claimant driving a pick up truck and performing odd jobs. The preliminary hearing was continued to allow claimant's counsel the opportunity to view the material. At the continuation preliminary hearing the claimant admitted he had falsely answered the question and apologized but explained that he was forced to perform odd jobs because he had no income. He further explained that he had tried to get confirmation from respondent of the days he worked and when he last worked so that he could obtain public assistance but that respondent never provided claimant with that information. Claimant testified he has worked some odd jobs such as painting, mowing grass and cutting boards which he has earned approximately \$700-800 since February 12, 2007.

The claimant had at least two 10-hour days driving before he reached Hazelton, Pennsylvania. After sleeping for a short time he was awakened by neck and arm pain as

well as chest pain which was later attributed to acid reflux. The claimant was released with an admonition against driving until examined by a neurologist and the consulting physician concluded claimant's work had aggravated a cervical problem. The diagnostic tests revealed, at a minimum, degenerative problems with claimant's cervical spine and Dr. Stein concluded that if claimant's symptoms were related to his cervical spine then his work activities had aggravated that problem. This Board Member concludes claimant has met his burden of proof, by the barest of margins, to establish that he suffered accidental injury arising out of and in the course of his employment.

The claimant's failure to tell the truth when coupled with his ability to perform the physical activities depicted by the surveillance video certainly calls into question the legitimacy of claimant's complaints of ongoing neck and arm problems. Nonetheless, the Board does not have jurisdiction to review the issues of claimant's entitlement to medical treatment and temporary total disability compensation on an appeal from a preliminary hearing.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>1</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>2</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 15, 2007, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2007.

---

HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant  
Fred Bellemere III, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge

---

<sup>1</sup> K.S.A. 44-534a.

<sup>2</sup> K.S.A. 2006 Supp. 44-555c(k).